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No. 93-1508

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1993

THOMAS A. MOSELEY and ELAINE F. MOSELEY,

Petitioners,

vs.

STATE OF GEORGIA,

Respondent.

Petition For Writ Of Certiorari
To The Supreme Court Of Georgia

BRIEF OF RESPONDENT STATE OF GEORGIA IN OPPOSITION TO PETITIONERS' PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Supreme Court of Georgia properly held that the state's punitive damages apportionment law, O.C.G.A. § 51-12-5.1(e)(2), satisfied due process requirements where the property interests of private parties and the state simultaneously accrue and punitive damages do not contain any compensatory element under Georgia law?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

SUMMARY OF THE ARGUMENT 4

REASONS FOR DENYING THE PETITION 5

I. Introduction 5

II. The Takings Clause Cases Cited By Petitioners Are Inapposite Since Punitive Damages Are Not Compensatory In Georgia And Petitioners Receive The Full Value Of Their Cause of Action As Defined By State Law 7

A. State Law Defines What Property Belongs To Petitioners And No Taking Has Occurred In This Case As All Rights Vested Simultaneously 7

B. The Decision Of The Supreme Court Of Georgia Does Not Conflict With Decisions Of This Court Concerning The Takings Clause Of The Fifth Amendment 13

III. Other State Court Decisions Are Not In Conflict With The Case *Sub Judice* When Considered In Conjunction With The Accompanying Statutory Schemes 15

CONCLUSION 19

TABLE OF AUTHORITIES

Page

CASES

Asarco, Inc. v. Kadish, 490 U.S. 605 (1989) 3

Bagley v. Shortt, 261 Ga. 762, 410 S.E.2d 738 (1991) 10, 12

Board of Regents v. Roth, 408 U.S. 564 (1972) 7, 10

Bowers v. Fulton County, 227 Ga. 814, 183 S.E.2d 347 (1971) 14

Burford v. Sun Oil Co., 319 U.S. 315 (1943) 6

Capitol Ford Truck Sales, Inc. v. Ford Motor Co., 819 F. Supp. 1555 (N.D. Ga. 1991) 6

Duke Power Co. v. Carolina Env. Study Group, 438 U.S. 59 (1978) 14

Gordon v. State, 585 So.2d 1033 (Fla. App. 3 Dist. 1991) 11

Gordon v. State, 608 So.2d 800 (1992), *cert. denied*, ___ U.S. ___, 113 S.Ct. 1647, 123 L.Ed.2d 268 (1993) 7, 11

Kirk v. Denver Publishing Co., 818 P.2d 264 (1991) 16

McBride v. General Motors Corp., 737 F. Supp. 2563 (M.D. Ga. 1990) 6

Money v. Thompson & Green Machinery Co., 155 Ga. App. 566, 271 S.E.2d 699 (1980) 14

Railroad Comm'n v. Pullman Co., 312 U.S. 496 (1941) 6

Shepherd Components v. Brice Petrides-Donohue & Associates, Inc., 473 N.W. 2d 612 (1991) 12

Smith v. Miller, 261 Ga. 560, 407 S.E.2d 727 (1991) 9

Teasley v. Mathis, 243 Ga. 561, 255 S.E.2d 57 (1979) 10, 14

United States v. Cruikshank, 92 U.S. 542 (1875) 7

TABLE OF AUTHORITIES – Continued

Page

United States v. Sperry Corp., 493 U.S. 52 (1989) 13, 15, 17

Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155 (1980) 9, 10, 13, 15

STATUTES AND REGULATIONS

O.C.G.A. § 51-12-5.1 ..... *passim*

Col. Rev. Stat. Ann. § 13-21-102 16

Fla. Stat. Ann. § 768.73 ..... 16, 17

Ill. Rev. Stat. Ch. 735 ¶ 5/2-1207 16

Iowa Code Ann. § 668A.1 ..... 12, 16, 18

Mo. Stat. Ann. § 537.675 16

N.Y. C.P.L.R. § 8701 16

Or. Rev. Stat. § 18.540 16

Utah Code Ann. § 78-18-1 16

STATEMENT OF THE CASE

Beginning July 1, 1987, awarding punitive damages in Georgia underwent a dramatic change in a number of respects. To clarify that punitive damages were merely a form of deterrence and punishment, all compensatory elements were removed from such awards. O.C.G.A. § 51-12-5.1(c). Having allowed for full compensation to injured plaintiffs, the state legislature, the General Assembly, enacted a statutory cap of $250,000.00 on punitive damage awards to limit the perceived windfall received by some claimants. O.C.G.A. § 51-12-5.1(g). No statutory cap was placed on actions where the plaintiff proved that a defendant acted out of a specific intent to harm. O.C.G.A. § 51-12-5.1(f). In product liability cases, no cap was imposed, but 75 percent of any punitive damages awarded are payable to the state, less a proportionate amount for the costs of litigation, including reasonable attorneys' fees. O.C.G.A. § 51-12-5.1(e)(2).

The statute at issue here was adopted in 1987 as a part of tort reform in Georgia. *See* 1987 Ga.L. p. 915-16. Since the cause of action in this case arose after July 1, 1987 (the accident at issue occurred in 1989), any claim to a recovery of punitive damages is governed by and limited to what is permitted under current statutory provisions. There is no retroactivity issue in this appeal. The preamble to the tort reform legislation establishes that the legislature intended a comprehensive re-structuring of the method by which punitive damages were treated in the courts of Georgia. *Id.* One goal of tort reform was to improve the public's confidence in the legal system by eliminating the public perception that excessive windfalls have been awarded to select individuals. Another was to

avoid proliferation of litigation based upon speculative lawsuits.

The lawsuit *sub judice* was filed by Thomas and Elaine Moseley (hereafter collectively "Petitioners") to recover for the death of their son, Shannon Moseley. Mr. Moseley was killed in a traffic accident when the vehicle in which he was riding, a General Motors pick-up truck, burst into flames after it was struck by another car. Petitioners alleged that the vehicle, which was designed with "side-saddle" gasoline tanks located outside the chassis, was defective. On February 4, 1993, after a trial on the merits, a Fulton County jury found for Petitioners on their compensatory damage claim in the amount of $4,241,611.84, representing "the full value of the life of Shannon Christopher Moseley". (Petition, A24). The jury also awarded Petitioners $1.00 on their claim for the pain and suffering of their son prior to his death. (Petition, A23). Finally, in reliance upon Georgia's punitive damage statute, the jury found General Motors deserving of punishment under the statutory criteria and assessed $101,000,000.00 in punitive damages against General Motors. (Petition, A25). It is only this latter award which is at issue in this appeal.

Although Petitioners filed a pretrial motion seeking to declare O.C.G.A. § 51-12-5.1(e)(2) unconstitutional, they did not obtain a ruling on that motion prior to invoking the statute at trial to secure a recovery. (Petition, p. 3 n.3). The State of Georgia filed a brief in opposition to the Petitioners' motion on February 23, 1993, and additionally sought leave of the court to intervene in the action and for an apportionment of the punitive damages prior to issuance of judgment. (Petition, p. 3 n.3). After

the jury's substantial punitive damages award, and simultaneous with the entry of judgment on that award, the Fulton Superior Court declared the statute unconstitutional *inter alia* as violative of the Takings Clause of the federal constitution. (Petition, A28). The State appealed this decision.

After a thorough review of the legal arguments and the record, and after receiving briefs of numerous *amici curiae* on the constitutional questions, the Georgia Supreme Court rejected the trial court's analysis and upheld the statute as constitutional as against all challenges. (Petition, A2-4.) Reconsideration of that decision was denied on December 17, 1993, (Petition, A1), and this petition followed.

All questions of the propriety of the jury's award, apart from the constitutionality of the statute, were severed and remain pending in the Court of Appeals of Georgia, Case Nos. A94A0826, A94A0827. Thus, the question of whether the punitive damages judgment will withstand appellate scrutiny has not been resolved. Accordingly, the present case may become moot given that Petitioners' interest in the punitive damages judgment and that of the Respondent State of Georgia is subject to divestiture at any time. Under such circumstances, the Court may wish to defer any consideration of the Petition until such time as there exists an unfettered right to a recovery under the judgment. See *Asarco, Inc. v. Kadish*, 490 U.S. 605, 621 n.1 (1989).

SUMMARY OF THE ARGUMENT

Petitioners challenge the Georgia law which authorizes an apportionment of punitive damages awards between plaintiffs and the state. O.C.G.A. § 51-12-5.1(e)(2). This statute became effective July 1, 1987, prior to the accrual of Petitioners' claim, as a part of comprehensive tort reform legislation. The Georgia legislation expressly removed all compensatory elements from punitive damage awards. The sole purpose of punitive damages in Georgia now is to punish and deter wrongful conduct, not to compensate a plaintiff. A Fulton County jury awarded Petitioners $4,241,611.84, representing "the full value of the life of Shannon Christopher Moseley". (Petition, A24). It is undisputed that Petitioners received complete relief on their compensatory claims. Only the punitive damages award is at issue here.

In asking this Court to grant certiorari, Petitioners argue that the timing of the apportionment results in a "taking" violative of due process. Petitioners suggest that the apportionment statute only comes into play upon entry of judgment, implying that their initial claim included the portion of the award retained by the state. In reality, the statute defines the claim from the outset. The total claim held by Petitioners is a compensatory claim and a claim for 25 percent of any punitive damage recovery. They never had any property interest in the remaining 75 percent of the punitive damages award, just as other tort plaintiffs have no property interest in any portion of an award exceeding the statutory cap of $250,000.00. O.C.G.A. § 51-12-5.1(g). There is no taking to invoke due process principles because the Petitioners never had a claim to, nor a right to payment of, the

totality of the punitive damages award in this case. Consequently, the decision of the Supreme Court of Georgia does not conflict with any decisions of this Court applying the Takings Clause of the Fifth Amendment.

In addition, there exists no conflict among state court decisions to warrant issuance of a writ of certiorari. To date, the courts of three states have approved apportionment statutes relating to punitive damages: Florida, Georgia, and Iowa. One state has disapproved an apportionment statute: Colorado. The Colorado statute contained a flaw in that the state's interest in the award was triggered *after* judgment in favor of the plaintiff, and was found to amount to a confiscation of a property right already vested in the plaintiff by virtue of the judgment. The other statutes do not contain this flaw. Simply because different outcomes result does not signal that the courts are in conflict or have applied disparate reasoning. Due process principles have been applied uniformly; the Colorado statute merely failed to pass muster when tested according to those principles.

REASONS FOR DENYING THE PETITION

I. INTRODUCTION

Petitioners invite this Court to accept jurisdiction of this appeal on the pretext of resolving matters of substantial public importance. Upon examination of the precedent and authorities set forth within, it is apparent that there is no need for this Court to review the opinion of the Georgia Supreme Court which decided this case in accordance with well-settled constitutional principles.

The Takings Clause argument advanced by Petitioners under the Fifth and Fourteenth Amendments to the U.S. Constitution must fail when it is realized that no compensatory element of damages is apportioned to the state, and that Petitioners' interest in a cause of action does not include the portion of a punitive damages award retained by the state. Quite simply, there is no taking.

Petitioners also predicate certiorari on a conflict in state authorities. The asserted conflict in state decisions does not materialize when the statutes in those decisions are comparatively analyzed. The Georgia punitive damages apportionment statute, O.C.G.A. § 51-12-5.1(e)(2), shares the characteristics of those statutes already upheld against like challenges, whereas the remaining statute is distinguishable. Consequently, what appears to be a conflict at first blush is in actuality a consistent application of the law tailored to different statutory schemes. With regard to the aberrational Georgia federal district court decision, *McBride v. General Motors Corp.*, 737 F. Supp. 2563 (M.D. Ga. 1990) that case lacked the full development of the issues undertaken here and would have been an excellent opportunity for the exercise of the district court's discretion to abstain given that no Georgia appellate court had spoken to the statute at the time of its ruling and that significant state public policy issues were presented. *See Burford v. Sun Oil Co.*, 319 U.S. 315 (1943); *Railroad Comm'n v. Pullman Co.*, 312 U.S. 496 (1941); *Capitol Ford Truck Sales, Inc. v. Ford Motor Co.*, 819 F. Supp. 1555 (N.D. Ga. 1991).

Although lacking in precedential value, it is worthy of note that this Court recently declined to grant certiorari in a case where the constitutionality of a similar

apportionment statute was squarely presented. *Gordon v. State*, 608 So.2d 800 (1992), *cert. denied*, ___ U.S. ___, 113 S.Ct. 1647, 123 L.Ed.2d 268 (1993). In that case, as here, the lower court upheld the statute. Respondent submits that nothing has legally changed to warrant this Court's action since the denial of certiorari in that case, other than the fact that yet another appellate court has approved the constitutional appropriateness of such statutes.

II. THE TAKINGS CLAUSE CASES CITED BY PETITIONERS ARE INAPPOSITE SINCE PUNITIVE DAMAGES ARE NOT COMPENSATORY IN GEORGIA AND PETITIONERS RECEIVE THE FULL VALUE OF THEIR CAUSE OF ACTION AS DEFINED BY STATE LAW.

A. State Law Defines What Property Belongs To Petitioners And No Taking Has Occurred In This Case As All Rights Vested Simultaneously.

In order to demonstrate to this Court that they are entitled to due process protections, Petitioners must first show a state law basis for a claim to the portion of the punitive damages award to be retained by the state under Georgia's apportionment law. The Fourteenth Amendment to the United States Constitution does not create any property rights, *United States v. Cruikshank*, 92 U.S. 542, 554 (1875), rather it merely safeguards rights that exist by virtue of some other legal source. As this Court held in *Board of Regents v. Roth*, 408 U.S. 564 (1972):

> Property interests, of course, are not created by the Constitution. Rather, they are created and

> their dimensions are defined by existing rules or understandings that stem from an independent source such as state law – rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.

Id. at 577. Thus, the first question for this Court is whether Petitioners have any property interest in the full punitive damages award in this case.

Under Georgia's punitive damages statute, the totality of an award never becomes private property because the plaintiff obtains a limited property interest in punitive damages at the time the cause of action accrues. Petitioners must concede that on the date their cause of action arose, Georgia's apportionment statute was already in effect. Had they gone to the statute on that date, and read the provision that the State was entitled to receive 75 percent of any punitive damages recovery, less a proportionate share of litigation costs, there could be no doubt that state law provided them a cause of action for a compensatory recovery, a recovery of 25 percent of any punitive damages award, and a proportionate share of litigation costs. Petitioners never had a claim for, or even an expectation of, a full recovery of any punitive damages judgment.

Petitioners also premise their "takings" argument on that feature of the apportionment statute which affords them a priority for the collection of compensatory damages. Plaintiffs receive payment of compensatory damages before the state may receive its share of a punitive damages award. But the timing of the payments under the judgment does not alter the constitutional analysis since both Petitioners and the state obtain the right to

payment at the same time: when judgment is entered. The state's enforcement of that right is merely postponed. The legislature's policy determination that plaintiffs should collect compensatory damages first does not lessen the state's interest in the punitive damages judgment or mean that the underlying rights to payment arise in a staggered fashion rather than simultaneously.

Petitioners omit this entire analysis from their petition to the Court. Petitioners would prefer to have this Court conclude that they maintain ownership of the entire cause of action until entry of judgment, and that the State then divests them of that property. That is not the law of Georgia. Furthermore, requesting punitive damages in a civil action is a voluntary act, and in relying on the Georgia statute to effect a recovery, Petitioners are bound by the limited recovery that the statute permits: 25 percent of any punitive damages recovery plus a proportionate share of litigation costs, and nothing more. In fact, their decision to invoke the statutory machinery for punitive damages should be deemed a waiver of the right to contest the constitutionality of the statute. *Smith v. Miller*, 261 Ga. 560, 407 S.E.2d 727 (1991) (voluntary participation in retirement program constituted waiver of constitutional challenge).

Plainly then, Petitioners' reliance on *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980), is misplaced. In that case, this Court in a narrow holding, decreed that a state may not charge private parties both a fee for court services and retain interest on funds deposited into the registry of court. *Id.* at 164-65. The significant distinction between that case and the one now before the Court is that interest on funds interpleaded into court

derives from funds which belong to the parties. Punitive damages under Georgia's statute are not derived from or related to compensatory damages, in the sense that they are not meant to compensate a plaintiff for wounded feelings or some other "damage". The sole purpose of punitive damages in Georgia is to punish and deter wrongful conduct, not to enrich or compensate a plaintiff. Thus, any claim of a derivative property interest arising out of the underlying liability judgment is impossible.

Since the respective interests of the state and the Petitioners vest simultaneously, and the state's interest is not derivative of the Petitioner's claim, there is no taking and the *Webb* decision is not controlling here. It is axiomatic that due process must be afforded only if the state seeks to deprive or divest a citizen of a vested interest, not when it re-defines that interest before the interest vests. *See e.g., Board of Regents v. Roth*, 408 U.S. 564 (1972). In *Bagley v. Shortt*, 261 Ga. 762, 410 S.E.2d 738 (1991), the Georgia Supreme Court upheld the $250,000.00 cap on punitive damages in non-product liability cases holding:

> If punitive damages lawfully may be eliminated, as we held in *Teasley v. Mathis*, 243 Ga. 561 (255 S.E.2d 57) (1979) (constitutionality of elimination of exemplary damages under no-fault automobile insurance law is not violative of due process, equal protection, or right of access to the courts); then they lawfully may be circumscribed, as by O.C.G.A. § 51-12-5.1(g).

Id. at 762. This holding is equally applicable to subsection (e)(2) containing the 75 percent apportionment provision. Petitioners' right to recover punitive damages is "circumscribed" by the statutory provision which creates and

permits the recovery of punitive damages in product liability cases by both plaintiffs *and* the state.

In *Gordon v. State*, 608 So.2d 800 (1992), *cert. denied*, ___ U.S. ___, 113 S.Ct. 1647, 123 L.Ed.2d 268 (1993), the Supreme Court of Florida upheld a statute which required 60 percent of punitive damage awards to be paid either to the state's public medical assistance trust fund, or the state's general revenue fund. Quoting from the intermediate appellate court, the Florida court noted:

> [Gordon] has no cognizable, protectable right to the recovery of punitive damages at all. Unlike the right to compensatory damages, the allowance of punitive damages is based entirely upon considerations of public policy. Accordingly, it is clear that the very existence of an inchoate claim for punitive damages is subject to the plenary authority of the ultimate policy-maker under our system, the legislature. In the exercise of that discretion, it may place conditions upon such a recovery or even abolish it altogether.

Id. at 801, *quoting* 585 So.2d at 1035-36. The intermediate appellate court in *Gordon*, also stated:

> Of course, since the legislature could have abolished the punitive damage claim altogether, or under this rationale, required that all of the award be payable to the state, the plaintiff can hardly complain of the determination that 60% (as opposed to 30% or 90%) was appropriate.

Gordon, 585 So.2d 1033, 1037 n.5 (1991), *aff'd* 608 So.2d 800 (1992), *cert. denied*, ___ U.S. ___, 113 S.Ct. 1647, 123 L.Ed.2d 268 (1993) (Emph. in Orig.). This is exactly what

the Georgia Supreme Court already recognized in *Bagley v. Shortt*, 261 Ga. 762, 410 S.E.2d 738 (1991), and again in its decision in this case below.

The Supreme Court of Iowa also upheld apportionment of a punitive damage award to that state in *Shepherd Components v. Brice Petrides-Donohue & Associates, Inc.*, 473 N.W.2d 612 (1991). Like the challenge here, the plaintiff in *Shepherd Components* raised due process and equal protection arguments under the federal and state constitutions. *Id.* at 619. The Iowa statute was actually more stringent than Georgia's statute in that it allowed a plaintiff to recover no more than 25 percent of a punitive damages award, making no provision for costs of the action borne by the plaintiff at all. I.S.A. § 668A.1(2)(b) (1987). According to the Iowa court:

> We have stated that punitive damages are not allowed as a matter of right and are discretionary. [Cit.Om.] We have also indicated that punitive damages are not intended to be compensatory and that a plaintiff is a fortuitous beneficiary of a punitive damage award simply because there is no one else to receive it. [Cit.Om.] . . . Consequently, we hold that the trial court's distribution of punitive damages does not violate plaintiff's constitutional rights.

Id. at 619.

Thus, the Supreme Court of Iowa, the Supreme Court of Florida, and the Supreme Court of Georgia have all properly determined that the creation, definition, circumscription, and apportionment of punitive damage awards properly rests with the legislature as a matter of public

policy, and has been constitutionally exercised in these cases.

B. The Decision Of The Georgia Supreme Court Does Not Conflict With Decisions Of This Court Concerning The Takings Clause Of The Fifth Amendment.

The decision of the Georgia Supreme Court upholding the constitutionality of O.C.G.A. § 51-12-5.1(e)(2) does not contravene holdings of this Court as asserted by the Petitioners. As set forth in division II., A., *supra*, the case of *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980), does not demand a different result since under the Georgia statute there is no compensatory amount belonging to plaintiffs which is apportioned. The State merely asserts its right to that portion of the punitive damages award allocated to it by statute. The State is not imposing a "user fee" upon Petitioners as was held impermissible in *Webb's Fabulous Pharmacies;* it is relying upon its independent claim to 75 percent of the punitive damages award, less a proportionate share of litigation costs.

Nor does the Court's decision in *United States v. Sperry Corp.*, 493 U.S. 52 (1989), support a reversal of the lower court. There the government successfully used a *quid pro quo* theory to argue that it was not improper to require litigants with claims against Iran to compensate the United States for its efforts to establish a tribunal to hear such claims. The clear distinction between *Sperry* and this case is that *Sperry* dealt with the assessment or "taking" of property, i.e. the user fee, which did at one

time belong to the claimant, whereas the Petitioners here never owned or had any interest in the state's share of the punitive damages award.

Moreover, no organic law, either federal or state *requires* that legislation contain "give and take" principles. Cf. *Teasley, supra* at 564; *Duke Power Co. v. Carolina Env. Study Group*, 438 U.S. 59, 88 (1978). But even assuming *arguendo* that such a requirement existed in this case, there is a *quid pro quo* built into Georgia's statute. An element of "just and adequate compensation" is provided by virtue of the fact that plaintiffs in products liability cases *are not* subject to the $250,000.00 cap applicable to other plaintiffs. This trade-off appears to bestow a rather considerable benefit to Petitioners in this case. They stand to recover at a minimum $25,000,000.00 as their portion of the award, one hundred times the amount available to plaintiffs not relying upon a product liability theory in Georgia.

In addition, there is a demonstrable societal benefit associated with the statute in that it both punishes wrongdoers and reduces the inequalities inherent in the old law, *i.e.*, victims of manufacturer's malfeasance receiving large punitive awards, where victims of individual malfeasance receive either small or no awards.

Furthermore, product liability plaintiffs receive a proportionate share of their attorney's fees from the state's share of the award. Unless a statute of Georgia authorizes an award of attorney's fees, each party must ordinarily bear that expense. *Bowers v. Fulton County*, 227 Ga. 814, 815-16, 183 S.E.2d 347, 348 (1971); *Money v. Thompson & Green Machinery Co.*, 155 Ga. App. 566, 567,

271 S.E.2d 699, 700 (1980). Thus, consonant with the goals of tort reform, a plaintiff in a product liability action can generate a fund from which to obtain payment of his attorney's fees, and at the same time assist the public in eliminating defective products from the marketplace.

In summary, both *Sperry* and *Webb's Fabulous Pharmacies* dealt with situations where the government was taking funds from private parties which lawfully belonged to them. That is not the situation here. In this case, the State has not asserted a right to Petitioners' compensatory relief, any sums derived therefrom, or the 25 percent of the punitive damages recovery which is provided to them by statute. The State will receive that portion of the award which by statute belongs to it.

III. OTHER STATE COURT DECISIONS ARE NOT IN CONFLICT WITH THE CASE *SUB JUDICE* WHEN CONSIDERED IN CONJUNCTION WITH THE ACCOMPANYING STATUTORY SCHEMES.

Contrary to the assertion of Petitioners in seeking certiorari, the decisions of the state courts uniformly resolve the constitutional questions. Petitioners approach these decisions as if each state court decision was a referendum upon the relative merits of apportionment statutes, not a legal inquiry into individual statutory schemes. In each case, including the one *sub judice*, the appellate courts examined the statutory scheme to see if some right to all of the punitive damages award vested in the plaintiff prior to the time of the apportionment to the state. This is the key inquiry for purposes of Takings Clause analysis, for there must be property in order for it

to be taken. All of the state courts used appropriate constitutional principles in reaching their decisions. However, Colorado's statute failed to pass muster due to its unique provisions, a failing not shared by the other statutory schemes.

As indicated above, several states in addition to Georgia, have adopted similar statutes apportioning punitive damages: Florida, F.S.A. § 768.73(2)(b) (1992); Illinois, Ill. Rev. Stat. Ch. 735 § 5/2-1207 (1992); Iowa, I.C.A. § 668A.1(2)(b) (1987); Missouri, M.S.A. § 537.675(2); New York, N.Y. C.P.L.R. § 8701; Oregon, Or. Rev. Stat. § 18.540; and Utah, Utah Code Ann. § 78-18-1. Only three of these statutes have been constitutionally challenged and in only one instance did the statute fail to withstand constitutional scrutiny. In *Kirk v. Denver Publishing Co.*, 818 P.2d 264 (1991), a case heavily touted by Petitioners, the Colorado statute did not vest a right in the state to a portion of punitive damages until *after* judgment in favor of the Plaintiff had issued. *See* 6A Colo. Rev. Stat. Ann. § 13-21-102(4) (1987). The Colorado statute provided in part that: "Nothing . . . shall be construed to give the [state] any interest in the claim for exemplary damages or the litigation itself **at any time prior to payment becoming due**." 6A Colo. Rev. Stat. Ann. § 13-21-102(4) (1987) (Emph. Supp.). Thus, under the Colorado statute, "it is only after the injured party has invested the time, effort and expense of obtaining *and actually collecting the judgment* that the statutory grant of one-third interest to the state comes into play." *Kirk, supra,* at pp. 266-67. (Emph. Supp.).

Petitioners attempt to place themselves within the ambit of *Kirk* by pointing out that Georgia does not

obtain its recovery until after the compensatory portion of an award is paid. O.C.G.A. § 51-12-5.1(e)(2). *Compare United States v. Sperry*, 493 U.S. 52, 62 n.9 (1989) (money is fungible and whether deducted or received by separate payment is immaterial for Takings Clause analysis).

However, there is a fundamental difference between a right which vests *after* judgment, and a right which vests *prior* to entry of judgment but whose enforcement is postponed until after a compensatory award is paid. Georgia's statute falls into the latter category. Both the state and the plaintiff obtain their respective claim to punitive damages, inchoate though it might be, at the time the cause of action accrues. They stand on equal footing at the time judgment is entered. In fairness to the plaintiff, the General Assembly has simply postponed collection of the State's share until the compensatory payment has been made. Significantly, the accrual of the State's right to receive the proceeds is not delayed, payment is just temporarily postponed.

The Iowa and Florida apportionment statutes, like their Georgia counterpart, require apportionment *upon* entry of final judgment when a cause of action is converted into a recoverable property interest. Thus, the Florida statute provides "In the final judgment, the court shall order the percentages of the award, payable as provided in subsection (2)." Fla. Stat. Ann. § 768.73(3). (*See* Petition, A35). Similarly, the Iowa statute provides:

> . . . after payment of all applicable costs and fees, an amount not to exceed twenty-five percent of the punitive or exemplary damages awarded may be ordered paid to the claimant, with the remainder of the award to be ordered

> paid into a civil reparations trust fund administered by the state court administrator.

Iowa Code Ann. § 668A.1(2)(b), (*See* Petition, A37). Georgia's interest in punitive damages vests at the same time as a plaintiff's interest, so there is a sharing or apportionment of punitive damages, but no taking. O.C.G.A. § 51-12-5.1(e)(2).

The Georgia, Florida and Iowa statutes on the one hand, and the Colorado statute on the other, are easily distinguished using Takings Clause analysis. Each of the courts interpreting the statutes inquired into the time that the state's interest vests. They each ruled based on the statute which was presented to them. In three cases, there was no taking. In one case, there was. The finding of a taking by the Colorado court does not conflict with the other courts' constitutional analysis which might be worthy of this Court's attention, but simply amounts to the examination of a single statute which was found not to comply with the uniform principles applied in all the cases. Accordingly, there is no conflict in the law to be resolved as Petitioners claim.

CONCLUSION

For all the foregoing reasons, the Petition for Writ of Certiorari should be denied, or alternatively the decision of the Supreme Court of Georgia should be summarily affirmed.

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